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DAFFER MCDANEIL LLP
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OFFICE OF PETITIONS

In re Application of
Rosenheimer, et al.
Application No. 10/637,402
Filed: August 8, 2003
Attorney Docket No. 5858-00700

: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3)
:
:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed January 5, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §120 and 35 U.S.C. §365(c) for the benefit of priority to the prior-filed PCT application listed in the concurrently submitted declaration.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1)

Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS)) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (*see* § 1.14).

Petitioner has not filed an amendment to the first line of the specification following the title OR an ADS referencing Application No. PCT/DE02/00541, filed February 14, 2002, and stating the relationship of Application No. PCT/DE02/00541, filed February 14, 2002, to the instant application.

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a substitute amendment (complying with 37 CFR 1.121) or ADS stating the relationship of the prior-filed PCT application to the instant application is required.

Pursuant to petitioner's authorization, deposit account no. 50-3268 will be charged the required \$1,370.00 petition fee.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
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Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX: (571) 273-8300 - ATTN: Office of Petitions

Any questions concerning this matter may be directed to Petitions Attorney E. Shirene Willis at (571) 272-3230.

A handwritten signature in cursive script that reads "Frances Hicks". The signature is written in black ink and is positioned above the printed name.

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy